

Gary M. Hoffman (*Pro Hac Vice*)
 Kenneth W. Brothers (*Pro Hac Vice*)
 DICKSTEIN SHAPIRO MORIN
 & OSHINSKY, LLP
 2101 L Street, NW
 Washington, DC 20037-1526
 Phone (202) 785-9700
 Fax (202) 887-0689

Edward A. Meilman (*Pro Hac Vice*)
 DICKSTEIN SHAPIRO MORIN
 & OSHINSKY, LLP
 1177 Avenue of the Americas
 New York, New York 10036-2714
 Phone (212) 835-1400
 Fax (212) 997-9880

Jeffrey B. Demain, State Bar No. 126715
 Jonathan Weissglass, State Bar No. 185008
 ALTSHULER, BERZON, NUSSBAUM, RUBIN & DEMAINE
 177 Post Street, Suite 300
 San Francisco, California 94108
 Phone (415) 421-7151
 Fax (415) 362-8064

Attorneys for Plaintiff Ricoh Company, Ltd.

**UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA
 SAN FRANCISCO DIVISION**

SYNOPSYS, INC.,)	
)	CASE NO. C-03-2289-MJJ (EMC)
Plaintiff,)	
)	CASE NO. C-03-4669-MJJ (EMC)
v.)	
)	
RICOH COMPANY, LTD.,)	
)	
Defendant.)	
)	
RICOH COMPANY, LTD.,)	RICOH'S MOTION TO QUASH SUBPOENAS
)	
Plaintiff,)	
)	
v.)	
)	
AEROFLEX INCORPORATED, et al.,)	
)	
Defendants)	

1 In April 2006, Synopsys and the Aeroflex defendants moved to compel two more deposition
2 days of a third party resident of Japan, Dr. Hideki Kobayashi. Ricoh objected to the motion and sought
3 a protective order, pointing out that Dr. Kobayashi already had been deposed for two days. On March
4 30, 2006, this Court after considering all of the issues raised permitted Dr. Kobayashi to be deposed for
5 "one additional day": "The Customer Defendants are entitled to take *one additional day* of the
6 deposition of Dr. Kobayashi, the first-named inventor of the patent-in-suit." D.E. 414, at 3, emphasis
7 added. The parties agreed to split the cost of Dr. Kobayashi traveling to the U.S. so he could attend his
8 one day deposition. Dr. Kobayashi was deposed for a very full day, from 9:30 am to nearly 7 pm,
9 thereby having testified for three full days in this matter. At the end of the day, counsel for defendants
10 served Dr. Kobayashi with two subpoenas – the first ignoring the Order by the Court and purporting to
11 require even more deposition testimony from Dr. Kobayashi, and second requiring his attendance at
12 trial. (Exh. 1&2.)

13 The subpoenas should be quashed, and Synopsys' counsel should be sanctioned for their
14 deliberate disregard of this Court's order. Those subpoenas are a gross violation of the Court's explicit
15 instructions that the deposition be limited to only one day. Synopsys had sought two additional days of
16 Dr. Kobayashi's deposition; Ricoh objected and sought to block any further testimony. Thus, this Court
17 has already been presented with cross-motions to compel and to quash. Ruling on the cross motions, the
18 Court instructed the parties that Dr. Kobayashi may be deposed for one additional day. After that
19 deposition day was concluded, defendants' counsel blatantly violated this Court's order by issuing new
20 subpoenas for additional testimony.

21 The subpoenas are invalid because they were served under false pretenses. There is no question
22 that Dr. Kobayashi could not have been subpoenaed in Japan, where he lives. Because there were no
23 Embassy or consulate deposition dates available that would work for counsel and the witness, the parties
24 agreed that they would split the cost of Dr. Kobayashi's travel to the U.S. so he could provide his
25 additional day of testimony. The only reason that Dr. Kobayashi was in the U.S. was to testify. To lure
26 a witness under false pretenses into a jurisdiction and serve him with a subpoena is deplorable and a
27 violation of the federal rules, and renders void the subpoena. *See Wyman v. Newhouse*, 93 F.2d 313 (2d
28 Cir. 1937) (fraudulent inducement into the jurisdiction serves as a defense to service).

1 The Court already has acknowledged that it did not have jurisdiction over Dr. Kobayashi.
2 Service of subpoenas upon resident of Japan temporarily in the jurisdiction pursuant to an agreement
3 that he testify for one day cannot create that jurisdiction. Dr. Kobayashi has returned to Japan and is no
4 longer in the U.S. As the Court never had jurisdiction, it cannot enforce the invalid subpoenas. Thus,
5 the subpoenas should be quashed.

6 The subpoenas also are invalid because counsel failed to include the required witness fee. Rule
7 45 requires the inclusion of a mileage fee from the residence of the witness to the location of the
8 testimony. Dr. Kobayashi is a resident of Tokyo, Japan, and the site of the testimony is San Francisco –
9 about 11,000 miles round trip. At the General Services Administration (GSA) 2006 *per diem* rate of
10 \$1.07 per mile, the witness should have been provided a check in the amount of \$11,770 for each
11 subpoena. However, no witness fee was included with either subpoena, rendering them defective and
12 unenforceable.

13 Counsel for Synopsys and the Aeroflex defendants have not attempted to defend the validity of
14 the subpoenas, but instead have claimed that additional testimony is needed from Dr. Kobayashi. They
15 made this same argument in April, and this Court permitted one additional day. There is point that
16 discovery must come to an end, and after three days of testimony from this third party, we are at that
17 point. The subpoenas should be quashed, and Ricoh receive its fees and costs pursuant to 28 U.S.C.
18 1927.

19
20 Dated: June 7, 2006

DICKSTEIN SHAPIRO MORIN & OSHINSKY

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22
23 By: /s/ Kenneth W. Brothers
24 Gary M. Hoffman
25 Kenneth W. Brothers
26 2101 L Street, NW
27 Washington, DC 20037-1526
28 Phone (202) 785-9700
Fax (202) 887-0689

Attorneys for Ricoh Company, Ltd.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

RICOH COMPANY, LTD.,

Plaintiff,

vs.

AEROFLEX INC., et al.,

Defendants.

CASE NO. CV 03-4669-MJJ (EMC)

CASE NO. CV 03-2289-MJJ (EMC)

**[PROPOSED] ORDER GRANTING
PLAINTIFF RICOH'S MOTION TO QUASH
SUBPOENAS**

SYNOPSYS, INC.,

Plaintiff,

vs.

RICOH COMPANY, LTD.,

Defendant.

Upon consideration of RICOH'S MOTION TO QUASH SUBPOENAS, and supporting evidence, Defendants' Opposition, and supporting evidence, and any reply and additional argument, and having conducted a hearing on the motions, and the Court being fully advised of the premises, the Court hereby GRANTS Ricoh's Motion to Quash the Subpoenas served on Dr. Hideki Kobayashi and awards Ricoh its reasonable attorneys' fees incurred as a result of the Aeroflex Defendants'/Synopsys' service of the subpoenas.

IT IS SO ORDERED.

DATED: _____

The Honorable Edward Chen
Magistrate Judge, United States District Court